

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**ROBERT KALVITZ**

Plaintiff

vs.

**CITY OF CLEVELAND**

Defendants

: CASE NO. 1:16-CV-00748

: JUDGE SOLOMON OLIVER, JR.

: **MOTION FOR AN ORDER TO PROCEED**  
: **WITH TRIAL IN THE INSTANT FEDERAL**  
: **CASE**

Now comes Counsel, HENRY J. HILOW, attorney for the Defendant, Jeffery J. Follmer, in the above captioned matter. Counsel is scheduled for trial in the matter City of East Cleveland v. Randolph Dailey (Case No. 15CRB00623) on the same date as the above captioned matter. Because federal matters take precedence over trial court matters, Counsel filed a Motion to Continue Trial with the East Cleveland Municipal Court on July 2, 2019. On July 5, 2019, Ms. Willa Mae Hemmons, Law Director for the City of Cleveland, informed Counsel via email that the Court denied the continuance request on July 3, 2019. The docket indicates that the Court issued this ruling without reviewing Counsel's Response to the Prosecutor's Opposition to the continuance request. Furthermore, despite Counsel's multiple phone calls to the Court's acting bailiff on the date of the ruling, the Court never took any action to notify Counsel or the Defendant of the Denial of the continuance request. Counsel only discovered the Court's ruling through Ms. Hemmons' July 5, 2019 email and an independent review of the Court's docket. The Court's acting bailiff instructed Counsel that the Court would notify him of a ruling on the Motion, in response to Counsel's repeated respectful requests for a conference between the parties to discuss the continuance request.

In Ms. Hemmons' Opposition to Counsel's continuance request, she argued, on page three (3), that "while it is true that normally a federal court trial 'trumps' a local one, this is a very unusual circumstance - one that reeks of conspiracy and fraud against the Court."

Subsequently, in her July 5, 2019 email, Ms. Hemmons threatened to issue a capias against Counsel's client in the pending Municipal Court matter and asserted that there are other attorneys that could represent him in the event of Counsel's absence. These other attorneys include counsel for the other three (3) co-Defendants, who had their charges dismissed because they paid money to the City of East Cleveland. As an officer of the Court, Counsel has not, nor has he ever, participated in fraud or conspiracy against this Court, or any other Court. Furthermore, it would be clearly inappropriate for an attorney for a co-Defendant, who already resolved their case, to handle the trial of another co-defendant already represented by an attorney. Counsel is not requesting a continuance in the above captioned matter before this Honorable Court. Counsel is respectfully requesting guidance as to his ability to proceed in Federal Court.

Counsel greatly appreciates the attention of the Court to this issue and, in the interest of justice, respectfully requests the authority to proceed with pending matter before the Federal Court. Attached below are: Exhibit A – the current East Cleveland Municipal Court Docket for Case No. 15CRB00623; Exhibit B – Counsel's Motion to Continue Trial; Exhibit C – City of East Cleveland's Opposition to Counsel's continuance request; Exhibit D – Counsel's Response to City's Opposition; Exhibit E – Ms. Hemmons' July 5<sup>th</sup>, 2019 email.

Respectfully Submitted,

/s/Henry J. Hilow.

**HENRY J. HILOW (0019601)**

HILOW & SPELLACY LLC

The Rockefeller Building, Suite #1300

614 West Superior Avenue

Cleveland, Ohio 44113

Phone: (216) 344-9220

Fax: (216) 664-6999

ATTORNEY FOR DEFENDANT

JEFFERY J. FOLLMER

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion for an Order to Proceed with Trial in the Instant Federal Case* was submitted via the Court's electronic filing system, on this 8<sup>th</sup> day of July, 2019

/s/Henry J. Hilow.

**HENRY J. HILOW (0019601)**

**EXHIBIT**

## East Cleveland Municipal Court

Judge William L. Dawson, Presiding

[Make Payment](#)

## Traffic/Criminal Case Summary

Actions

[Today's Traffic/Criminal Court Docket](#)[Traffic/Criminal Case Search](#)[Today's Civil Court Docket](#)[Civil Case Search](#)[Court Home Page](#)

## General Information

Case Number : 15CRB00623  
 Attorney Name :  
 Assigned To : WILLIAM L. DAWSON  
 Offense Date : 11/29/2012  
 Date Filed : 7/2/2015  
 Waiverable : No  
 Affiant Name : SCOTT GARDNER  
 Affiant Type : East Cleveland PD  
 Proof of Insurance : Unknown  
 Muni Name : East Cleveland

## Financial Information

Total Fines & Costs : \$175.00  
 Total Paid : \$175.00  
 Total Owed : \$0.00

## Vehicle Information

Plate State : OH  
 Plate Number :  
 Vehicle Year :  
 Vehicle Make :  
 Vehicle Model :  
 Vehicle Color :

## Defendant Information

Name : RANDOLPH DAILEY  
 Address Line1 : 8313 BURLINGTON DR  
 Address Line2 :  
 City : RIDGEVILLE  
 State : OH  
 Zip Code : 44039  
 Date of Birth : 6/26/1969

## Warrant Information

Active Warrants : No

## Counts

Count Number	Citation Number	Statute Code	Statute Description	Plea	Finding	Adjudicated By
1	1207399	525.12	DERELICTION OF DUTY	NOT GUILTY		

## Hearing Information

Description	Court Date	Court Time	Court Room	Heard By
Jury Trial	7/15/2019	9:30:00 AM	1	WILLIAM L. DAWSON
FINAL PRE-TRIAL	4/4/2019	9:00:00 AM	1	WILLIAM L. DAWSON
Pre-Trial	2/7/2019	9:00:00 AM	1	WILLIAM L. DAWSON
Continued	7/9/2018	1:30:00 PM	1	WILLIAM L. DAWSON
Pre-Trial	5/10/2018	1:30:00 PM	1	WILLIAM L. DAWSON
Arraignment	4/12/2018	9:30:00 AM	1	WILLIAM L. DAWSON
Arraignment	7/10/2015	10:30:00 AM	1	WILLIAM L. DAWSON

## Docket Information

NOTE: The Docket Information below is an abbreviated version of the actual Docket Entry. Only the first 60 characters of each line will show.

[Click Here](#) to display Full Docket Entry or contact the court for the full text entry.

Entry Date	Entry
7/3/2019	Response to City's Opposition to City's Opposition to Defende
7/3/2019	Jury Trial court date set for 07/15/2019 at 09:30 AM in room
7/3/2019	Journal IE Cont by Def - Denied created in Book 15 Page 349
7/2/2019	City's Opposition to Defendant's Motion's for Continuance Co
7/2/2019	City's Filed Motion in Limine to Preclude Testimony of Jason
7/2/2019	Plaintiff, the City's Filed City's Preliminary Trial Brief.
7/2/2019	Written Continuance filed by Defendant's Attorney on 07/02/2
4/12/2019	Witness List filed via fax by Defendant's Attorney
4/12/2019	Supplemental Witness List filed by Defendant's Attorney via
4/4/2019	Hearing conducted on 4/4/19 all parties present Open/incomul
3/11/2019	City Filed a Motion for CITY'S MOTION FOR USE OF THE NIGHT C
2/7/2019	FINAL PRE-TRIAL court date set for 04/04/2019 at 09:00 AM in
2/7/2019	Feb. 7th 2019 Hearing. Counsel for Defendant Dailey present
2/6/2019	Pre-Trial court date set for 02/07/2019 at 09:00 AM in room
1/11/2019	City's Motion for Extension of the Discovery Deadline filed
12/3/2018	Motion filed by the CITY'S NOTICE OF INTENT TO USE EXPERT WI
11/20/2018	Written Motion in Opposition to Defendant filed by Prosecuto
10/23/2018	EAST CLEVELAND MUNICIPAL COURT CUYAHOGA COUNTY, OHIO STA
10/1/2018	Paid \$175.00 receipt# 2018504829 paid by RANDOLPH DAILEY
10/1/2018	Written COURT of Appeal filed filed by Defendant's Attorney
9/20/2018	September 20, 2018 The City of East Cleveland vs. Rando
9/20/2018	This Opinion follows a full hearing held on July 9th 2018 by
7/25/2018	July 25 2018 Counsel asked for a thirty day cont. The contin
7/25/2018	This matter came before the court on July 9th 2018. A hearin
7/25/2018	Defendant Attorney filed a Motion to Grant Extension of Time
7/6/2018	Objection to City Of East Cleveland's Motion to Continue and
7/6/2018	Written Motion in Opposition to Defendant filed by Prosecuto
6/18/2018	City Filed a Motion for Continuance and Stay of Proceedings.
6/18/2018	Written Continuance filed by Prosecutor on 06/18/2018
5/10/2018	Continued court date set for 07/09/2018 at 01:30 PM in room
5/10/2018	Case was called for hearing on 5/10/2018. Counsel for Defend
4/12/2018	Pre-Trial court date set for 05/10/2018 at 01:30 PM in room
4/12/2018	Defendant in court with counsel and case reset for pre-trial
4/10/2018	Brief in Opposition to Defendant's Motion to Dismiss Asserti
4/6/2018	Written Motion to Dismiss filed by the Defendant's Attorney
4/5/2018	Plea of NOT GUILTY entered on 04/05/2018
4/5/2018	Written Jury Demand filed by Defendant's Attorney on 04/05/2
4/5/2018	Written Motion to Enter Plea of Not Guilty filed by the Defe



IN THE EAST CLEVELAND MUNICIPAL COURT  
CRIMINAL DIVISION  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO	)	CASE NUMBER: CRB 623
	)	
	)	
Plaintiff	)	JUDGE WILLIAM DAWSON
	)	
vs.	)	
	)	
RANDOLPH DAILEY	)	<u>MOTION TO CONTINUE TRIAL</u>
	)	
Defendant	)	
	)	

Now comes the Defendant, Randolph Dailey, by and through undersigned Counsel, respectfully request this Honorable Court continue the trial in this matter currently set for Monday, July 15, 2019 to another date and time convenient to the Court.

Counsel for Mr. Dailey will be engaged in a Federal trial, Robert Kalvitz vs. City of Cleveland, et al., Case Number 1:16-cv-00748, which is set to commence Monday, July 15, 2019 before the Honorable Solomon Oliver, Jr. This trial is expected to last approximately four (4) days.

This motion is being made in the interest of justice and not for the purpose of delay.

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**Henry J. Hilow (0019601)**  
The Rockefeller Building, Ste. 1300  
614 West Superior Avenue  
Cleveland, Ohio 44113  
Phone: (216)344-9220  
Fax: (216)664-6999  
ATTORNEY FOR RANDOLPH DAILEY

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion to Continue was sent to Willa Hemmons, Esq., City of East Cleveland Prosecutor, by submittal to Clerk's Office, 14340 Euclid Ave., Cleveland, Ohio on this 28<sup>th</sup> day of June 2019.

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**HENRY J. HILOW (0019601)**  
**The Rockefeller Building, Ste. 1300**  
**614 West Superior Ave.**  
**Cleveland, Ohio 44113**



IN THE EAST CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO 44112

CITY OF EAST CLEVELAND

Plaintiff,

v.

RANDOLPH DAILEY,

Defendant.

) CASE NO.: 15 CRB 00623  
)  
) JUDGE WILLIAM DAWSON  
)  
)  
)  
)  
)  
)

CITY'S OPPOSITION TO  
DEFENDANT'S MOTION FOR CONTINUANCE  
CORRECTED

NOW Comes Defendant City of East Cleveland, by and through its undersigned counsel, and hereby enters its Opposition to Defendant's Motion for Continuance; and respectfully urges that in the exercise of its discretion this Court find that good cause exists to issue an Order denying a continuance of the July 15, 2019 trial date.

It is well established that the decision to grant or deny a continuance is entrusted to the sound discretion of the trial court. *Black v. Black*, 12th Dist. No. CA2008-06-022, 2009-Ohio-92, ¶ 11, citing *State v. Unger*, 67 Ohio St.2d 65, 67 (1981). Accordingly, review of the trial court's decision for an abuse of discretion. An abuse of discretion is more than an error of law or judgment; it implies the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

In opposition to Defendant's motion the City sets forth several considerations, all of which meet the test required in consideration of this Motion. The Supreme Court of Ohio has

provided that in ruling on a motion for continuance the trial court may consider the following factors:

- a. The length of the delay requested;
- b. Whether other continuances have been requested and received;
- c. The inconvenience to litigants, witnesses, opposing counsel and the court;
- d. Whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived;
- e. Whether the [movant] contributed to the circumstance which gives rise to the request for a continuance; and
- f. Other relevant factors, depending on the unique facts of each case.

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~~See Unger at 67-68; *Tener v. Tener-Tucker*, 12th Dist. No. CA2004-05-061, 2005-Ohio-3892, ¶~~

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42.

A glaring point in Defense's Motion to be considered in determining "whether it is dilatory, purposeful, or contrived" is found upon review of the docket in the case that Defense Counsel presents as his continuance reason. In background, yesterday, July 1, 2019, City's Counsel was in federal court with Atty. Sarah Thomas Kovoov, one of the primary counselors in the referenced case, *Kavitz v. City of Cleveland, Ohio, et al.*, OHND Case No. 17-04174. The trial for *Kavitz* was set on April 11, 2019. The within case was set for trial on April 4, 2019 with Defense Counsel submitting a List of Witnesses, thereto on April 12, 2019. And, although the *Kavitz* case was mentioned in the context of setting deadlines for the case we were litigating, Atty. Kovoov *never* mentioned that Mr. Hilow was part of the *Kavitz* case. That is because it is doubtful that Atty. Kovoov was even aware at that point that he was a participant in the *Kavitz* case inasmuch as Atty. Hilow *did not* enter his appearance until Friday, June 28, 2019.

It is obvious then that the Supreme Courts points "d" and "e" are operative here, again:



- d. *Whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived;*
- e. *Whether the [movant] contributed to the circumstance which gives rise to the request for a continuance;*

A careful review of the docket, attached as Exhibit "A," reveals that Mr. Hilow's name never appears in the *Kavitz* case prior to June 28, 2019. By that date, several of the witnesses who are members of the Cleveland Police Patrol Association (CPPA) had been served a subpoena to appear at Defendant Dailey's trial. The President of the CPPA is Jeffrey Folmer. Mr. Folmer is the party in the *Kavitz* case that Mr. Hilow purportedly, belatedly represents. It is very dubious that this is a coincidence. Clearly, Atty. Hilow's 'Notice of Appearance' in the ~~*Kavitz* case is a contrived attempt to delay the trial. It is a transparent attempt to employ dilatory,~~

purposeful tactics to further avoid justice. The movant's attorney has unequivocally contributed to the "circumstance which gives rise to the request for a continuance."

The Motion is based upon an assertion that is clearly a 'circumstance' manipulated for a dilatory purpose.

At this point, hundreds of hours have been spent in preparation for the within trial. Dozens of witnesses have been subpoenaed for Defendant Dailey's trial. It would be a logistical nightmare to try to reschedule everyone's appearance bring in point "c" above:

- c. *The inconvenience to litigants, witnesses, opposing counsel and the court;*

The Defense Motion epitomizes this prohibition again granting its continuance. And, while it is true that normally a federal court trial 'trumps' a local one, this is a very unusual circumstance—one that reeks of conspiracy and fraud against the Court.

Their Motion does not present serious matters for consideration under the above factors supported by the Ohio Supreme Court. In this regard Defense's Motion is not deserving of

additional time, because it has not acted in good faith in numerous circumstances during this litigation. It has not acted in good faith by previously attempting to stir up diversionary tactics that undermine the integrity and credibility of the case. Even if it is given that Defense Counsel is legitimately Mr. Folmer's Counsel, the fact that the *Kavitz* case was set on April 11, 2019 giving this Mr. Hilow three months to notify this Court is *prima facie* dilatory and should be rejected outright.

The Motion thus lacks merit and is obviously made in an effort to deter justice and avoid the City's day in court on behalf of the people of East Cleveland.

### CONCLUSION

Defense has failed to raise a single meritorious reason for the continuance of the trial in this matter. Observing that this case has proceeded with numerous intervening circumstances including two appeals, professional attacks upon the City's Counsel as well as hearings on several frivolous issues brought by Defense, the fact that such a motion is brought so close to the trial is inherently suspect and should be DENIED.

Respectfully submitted,

/s/ Willa Hemmons

WILLA HEMMONS, 00041790

Law Director

City of East Cleveland

14340 Euclid Avenue

East Cleveland, Ohio 44112

(216) 681-2169 office

(216) 681-2199 fax

whemmons@eastcleveland.org

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion was served by FACSIMILE upon the, Esq., Attorney  
for Defendant Randolph Dailey, Henry Hilow, at (216) 664-6999 this 1<sup>ST</sup> day of July, 2019 as  
well as by email at [hhilow@mghslaw.com](mailto:hhilow@mghslaw.com); and, regular U.S. Mail at The Rockefeller Building,  
Suite 1300, 614 West Superior Avenue, Cleveland, Ohio 44113.

/s/ Willa Hemmons  
WILLA HEMMONS



Cat03,Greenberg,Standard,TrSched

**U.S. District Court  
Northern District of Ohio (Cleveland)  
CIVIL DOCKET FOR CASE #: 1:16-cv-00748-SO**

Kalvitz v. City of Cleveland, Ohio et al  
Assigned to: Judge Solomon Oliver, Jr  
Case in other court: 6th Circuit, 17-04174  
Cause: 42:1983 Civil Rights Act

Date Filed: 03/26/2016  
Jury Demand: Both  
Nature of Suit: 440 Civil Rights; Other  
Jurisdiction: Federal Question

**Plaintiff**

**Robert Kalvitz**

represented by **Sarah Thomas Kovoov**  
Ford, Gold, Kovoov & Simon  
8872 East Market Street  
Warren, OH 44484  
330-856-6888  
Fax: 330-856-7550  
Email:

---

sarah.thomas.kovoov@gmail.com

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

**Joel A. Flaxman**  
Ste. 201  
200 South Michigan Avenue  
Chicago, IL 60604  
312-427-3200  
Fax: 312-427-3930  
Email: jaf@kenlaw.com  
**ATTORNEY TO BE NOTICED**

**Kenneth N. Flaxman**  
Ste. 201  
200 South Michigan Avenue  
Chicago, IL 60604  
312-427-3200  
Fax: 312-427-3930  
Email: knf@kenlaw.com  
**ATTORNEY TO BE NOTICED**

**Thomas D. Lambros**  
Ford, Gold, Kovoov & Simon  
8872 East Market Street  
Warren, OH 44484  
330-856-6888  
Fax: 330-856-7550

Email: tdlambros@gmail.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**City of Cleveland, Ohio**

represented by **Shawn M. Mallamad**  
Greater Cleveland Regional Transit  
Authority  
1240 West Sixth Street  
Cleveland, OH 44113  
216-356-1302  
Fax: 216-350-5296  
Email: shawn.mallamad@gcrrta.org  
**TERMINATED: 09/05/2017**

**Stephen W. Funk**  
Roetzel & Andress - Akron  
Ste. 400  
222 South Main Street  
Akron, OH 44308

---

330-849-6602  
Fax: 330-376-4577  
Email: sfunk@ralaw.com  
**ATTORNEY TO BE NOTICED**

**William M. Menzalora**  
City of Cleveland  
Department of Law  
Ste. 106  
601 Lakeside Avenue  
Cleveland, OH 44114  
216-664-4285  
Fax: 216-664-2663  
Email:  
wmenzalora@city.cleveland.oh.us  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Christopher D. Randolph**  
*Cleveland Police Officer*

represented by **Marisa L. Serrat**  
Law Office of Jaime P. Serrat  
Ste. 2100  
55 Public Square  
Cleveland, OH 44114  
216-696-2150  
Fax: 216-696-1718  
Email: mserratlaw@gmail.com  
**ATTORNEY TO BE NOTICED**

**R. Brian Moriarty**  
 Ste. 2100  
 55 Public Square  
 Cleveland, OH 44113  
 216-566-8228  
 Fax: 216-623-7314  
 Email: bmoreartylaw@gmail.com  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Jeffrey J. Follmer**  
 Cleveland Police Officer

represented by **Henry J. Hilow**  
 McGinty, Hilow & Spellacy  
 1300 Rockefeller Bldg.  
 614 Superior Avenue, W  
 Cleveland, OH 44113  
 216-344-9220  
 Fax: 216-664-6999  
 Email: hhilow@mghslaw.com  
**ATTORNEY TO BE NOTICED**

---

**Marisa L. Serrat**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**R. Brian Moriarty**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Steven W. Kinas**  
 Cleveland Police Officer

represented by **Marisa L. Serrat**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**R. Brian Moriarty**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
03/26/2016	<u>1</u>	Complaint with jury demand against All Defendants. Filing fee paid \$ 400, Receipt number 0647-7545251. Filed by Robert Kalvitz. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons City of Cleveland, # <u>3</u> Summons Randolph, # <u>4</u> Summons Follmer, # <u>5</u> Summons Kinas ) (Kovoor, Sarah) Modified text on 3/28/2016 (S,SR). (Entered: 03/26/2016)
03/28/2016		Judge Solomon Oliver, Jr assigned to case. (S,SR) (Entered: 03/28/2016)
03/28/2016		



		Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge Nancy A. Vecchiarelli. (S,SR) (Entered: 03/28/2016)
03/28/2016	<u>2</u>	Original Summons and Magistrate Consent Form issued to counsel for service upon All Defendants. (Attachments: # <u>1</u> Magistrate Consent Form) (S,SR) (Entered: 03/28/2016)
03/31/2016	<u>3</u>	Motion for attorney Kenneth N. Flaxman to Appear Pro Hac Vice filed by Plaintiff Robert Kalvitz. Filing Fee Not Paid. (Attachments: # <u>1</u> Certificate of Good Standing)(G,CA) (Entered: 04/04/2016)
03/31/2016	<u>4</u>	Motion for attorney Joel A. Flaxman to Appear Pro Hac Vice filed by Plaintiff Robert Kalvitz. Filing Fee Not Paid. Attachments: # <u>1</u> Certificate of Good Standing)(G,CA) (Entered: 04/04/2016)
04/07/2016		Financial Transaction in the amount of \$240.00 received for motions to appear pro hac vice by attorneys Kenneth and Joel Flaxman, Receipt # 14660085315 Related document(s) <u>4</u> , <u>3</u> . (C,BA) (Entered: 04/07/2016)
04/13/2016		Order [non-document] granting Plaintiff's Motions for appearance pro hac vice by Attorney Joel A. Flaxman and Attorney Kenneth N. Flaxman. Local Rule 5.1 (c) requires that attorneys register for CM/ECF and file and receive all documents electronically. The CM/ECF registration form can be found at <a href="http://www.ohnd.uscourts.gov">www.ohnd.uscourts.gov</a> under Forms. (Related Doc # <u>3</u> , Related Doc # <u>4</u> ). Approved by Judge Solomon Oliver, Jr on 4/13/2016.(D,M) (Entered: 04/13/2016)
04/29/2016	<u>5</u>	Return of Service by Clerk by personal service executed upon City of Cleveland, Ohio on 4/27/2016, filed on behalf of Robert Kalvitz (Kovoor, Sarah) (Entered: 04/29/2016)
04/29/2016	<u>6</u>	Return of Service by Clerk by personal service executed upon Jeffrey J. Follmer on 4/27/2016, filed on behalf of Robert Kalvitz (Kovoor, Sarah) (Entered: 04/29/2016)
04/29/2016	<u>7</u>	Return of Service by Clerk by personal service executed upon Steven W. Kinas on 4/27/2016, filed on behalf of Robert Kalvitz (Kovoor, Sarah) (Entered: 04/29/2016)
04/29/2016	<u>8</u>	Return of Service by Clerk by personal service executed upon Christopher D. Randolph on 4/27/2016, filed on behalf of Robert Kalvitz (Kovoor, Sarah) (Entered: 04/29/2016)
05/16/2016	<u>9</u>	Unopposed Motion for extension of time until 06/15/2016 to answer <i>Plaintiff's Complaint</i> filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) (Entered: 05/16/2016)
05/17/2016	<u>10</u>	Unopposed Motion for extension of time until June 16, 2016 to answer filed by Defendant City of Cleveland, Ohio. (Mallamad, Shawn) (Entered: 05/17/2016)
05/20/2016		Order [non-document] granting Unopposed <u>9</u> Motion of Defendants Jeffrey J. Follmer, Steven W. Kinas, and Christopher D. Randolph for Extension of Time

		until 6/15/2016, to Answer Plaintiff's (re <u>1</u> ) Complaint. Approved by Judge Solomon Oliver, Jr on 5/20/2016.(D,M) (Entered: 05/20/2016)
05/20/2016		Order [non-document] granting Defendant City of Cleveland's Unopposed <u>10</u> Motion for Extension of Time until 6/16/2016, to Answer or otherwise respond to Plaintiff's (re <u>1</u> ) Complaint. Approved by Judge Solomon Oliver, Jr on 5/20/2016.(D,M) (Entered: 05/20/2016)
06/15/2016	<u>11</u>	Motion to dismiss for failure to state a claim filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. Related document(s) <u>1</u> . (Serrat, Marisa) (Entered: 06/15/2016)
06/15/2016	<u>12</u>	Answer to <u>1</u> Complaint, with Jury Demand filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) (Entered: 06/15/2016)
06/16/2016	<u>13</u>	Answer to <u>1</u> Complaint with Jury Demand filed by City of Cleveland, Ohio. (Mallamad, Shawn) Modified to add link on 6/16/2016 (W,CM). (Entered: 06/16/2016)
06/17/2016	<u>14</u>	Magistrate Consent Package issued. (D,M) (Entered: 06/17/2016)
06/17/2016	<u>15</u>	Case Management Conference Scheduling Order with case management conference to be held on 7/5/2016, at 11:30 AM at Chambers 19A before Judge Solomon Oliver Jr. Signed by Judge Solomon Oliver, Jr on 6/17/2016. (D,M) (Entered: 06/17/2016)
06/22/2016	<u>16</u>	Attorney Appearance <i>as Co-Counsel</i> of Thomas D. Lambros filed by Sarah Thomas Kovoov on behalf of Robert Kalvitz. (Kovoov, Sarah) Modified text on 6/23/2016 (S,S). (Entered: 06/22/2016)
06/23/2016		IMPORTANT: Notice [non-document] of case management conference rescheduled on 7/7/2016, at 3:30 PM at Chambers 19A before Judge Solomon Oliver Jr. (D,M) (Entered: 06/23/2016)
06/30/2016	<u>17</u>	Response and exhibits to <u>11</u> Motion to dismiss for failure to state a claim filed by Robert Kalvitz. (Flaxman, Kenneth) Modified text 6/30/2016 (C,KA). (Entered: 06/30/2016)
07/01/2016	<u>18</u>	Report of Parties' Planning Meeting , parties do not consent to this case being assigned to the magistrate judge, filed by Robert Kalvitz. (Flaxman, Kenneth) (Entered: 07/01/2016)
07/05/2016	<u>19</u>	Attorney Appearance by William M. Menzalora filed by on behalf of City of Cleveland, Ohio. (Menzalora, William) (Entered: 07/05/2016)
07/08/2016	<u>20</u>	Case Management Conference Order. Case is assigned to the standard track. Discovery due by 1/27/2017. Parties to be Joined and Pleading Amendments due by 8/15/2016, Dispositive Motions due by 2/28/2017. Judge Solomon Oliver, Jr. 7/8/16 (C,KA) (Entered: 07/08/2016)
07/13/2016	<u>21</u>	Order denying Defendants Christopher D. Randolph, Jeffrey J. Follmer, and Steven W. Kinas' Joint Motion to Dismiss for Failure to State a Claim (Related Doc # <u>11</u> ). Signed by Judge Solomon Oliver, Jr on 7/13/2016. (D,M) (Entered: 07/13/2016)



07/29/2016	<u>22</u>	Initial Disclosures filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 07/29/2016)
08/22/2016		Reassignment of Magistrate Judge due to the retirement of Magistrate Judge Nancy A. Vecchiarelli. In the event of a referral, case will be assigned to Magistrate Judge Jonathan D. Greenberg. (S,SR) (Entered: 08/22/2016)
01/12/2017	<u>23</u>	Notice to take Deposition of <i>Defendant Jeffrey J. Follmer</i> on <i>January 20, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 01/12/2017)
01/12/2017	<u>24</u>	Notice to take Deposition of <i>Defendant Steven W. Kinas</i> on <i>January 20, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 01/12/2017)
01/12/2017	<u>25</u>	Notice to take Deposition of <i>Defendant Christopher D. Randolph</i> on <i>January 20, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 01/12/2017)
01/23/2017	<u>26</u>	Agreed Motion to extend Discovery cutoff date for 45 days, until March 13, 2017 filed by Plaintiff Robert Kalvitz. (Kovoor, Sarah) Modified text 1/24/2017 (C,KA) (Entered: 01/23/2017)
01/27/2017		Order [non-document] granting <u>26</u> Agreed Motion to Extend Deadlines; Discovery due by 3/13/2017 and Dispositive Motions due by 4/5/2017. No further extension will be granted. Approved by Judge Solomon Oliver, Jr on 1/27/2017.(D,M) (Entered: 01/27/2017)
02/09/2017	<u>27</u>	Notice to take Deposition of <i>Jeffrey J. Follmer</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/09/2017)
02/09/2017	<u>28</u>	Notice to take Deposition of <i>Steven W. Kinas</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/09/2017)
02/09/2017	<u>29</u>	Notice to take Deposition of <i>Christopher D. Randolph</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/09/2017)
02/20/2017	<u>30</u>	Notice to take Deposition of <i>Officer Richard Gokey</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/20/2017)
02/20/2017	<u>31</u>	Notice to take Deposition of <i>Officer Tony Gonzalez</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/20/2017)
02/20/2017	<u>32</u>	Notice to take Deposition of <i>Officer Mark Maguth</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/20/2017)
02/20/2017	<u>33</u>	Notice to take Deposition of <i>Sgt. Jonathan Moran</i> on <i>February 27, 2017</i> filed by Robert Kalvitz. (Kovoor, Sarah) (Entered: 02/20/2017)
04/03/2017	<u>34</u>	Motion for summary judgment filed by Defendant City of Cleveland, Ohio. (Attachments: # <u>1</u> Exhibit A - Declaration of Joellen O'Neill, # <u>2</u> Exhibit B - Deposition of Jeffrey Follmer, # <u>3</u> Exhibit C - Deposition of Steven Kinas, # <u>4</u> Exhibit D - Deposition of Christopher Randolph, # <u>5</u> Exhibit E - Plaintiff Robert Kalvitz's Answers to Interrogatories)(Mallamad, Shawn) (Entered: 04/03/2017)
04/05/2017	<u>35</u>	Unopposed joint Motion for one week extension of time to file Defendants' Joint Motion for Summary Judgment until 04/12/2017 filed by Jeffrey J.

		Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) Modified text 4/10/2017 (C,KA). (Entered: 04/05/2017)
04/06/2017		Order [non-document] granting Defendants Christopher D. Randolph, Jeffrey J. Follmer, and Steven W. Kinas' Unopposed Joint <u>35</u> Motion for Extension of Time Until 4/12/2017, to File Joint Motion for Summary Judgment. Approved by Judge Solomon Oliver, Jr on 4/6/2017.(D,M) (Entered: 04/06/2017)
04/12/2017	<u>36</u>	Joint Motion for summary judgment filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph (related doc <u>34</u> ). (Attachments: # <u>1</u> Exhibit A- Kalvitz - Discovery, # <u>2</u> Exhibit B- Randolph - Transcript, # <u>3</u> Exhibit C- Kinas - Transcript, # <u>4</u> Exhibit D- Follmer - Transcript)(Serrat, Marisa) Modified text 4/17/2017 (C,KA). (Entered: 04/12/2017)
05/03/2017	<u>37</u>	Response in opposition to motions for summary judgment <u>34</u> and <u>36</u> filed by Robert Kalvitz. (Attachments: # <u>1</u> Exhibit 1. Kalvitz Declaration, # <u>2</u> Exhibit 2 Department of Justice Report)(Flaxman, Kenneth) Modified text 5/4/2017 (C,KA). (Entered: 05/03/2017)
05/16/2017	<u>38</u>	Reply Brief in support of <u>34</u> Motion for summary judgment filed by City of Cleveland, Ohio. (Mallamad, Shawn) Modified text 5/18/2017 (C,KA). (Entered: 05/16/2017)
09/05/2017	<u>39</u>	<del>Motion by Shawn M. Mallamad to withdraw as attorney filed by Defendant City of Cleveland, Ohio. (Mallamad, Shawn) (Entered: 09/05/2017)</del>
09/05/2017		Order [non-document] granting Attorney Mallamad's Motion to withdraw as attorney, attorney Shawn M. Mallamad removed from case. Defendant represented by co-counsel Attorney William Menzalora (Related Doc # <u>39</u> ). Judge Solomon Oliver, Jr. on 9/5/2017.(R,Sh) (Entered: 09/05/2017)
10/16/2017	<u>40</u>	Order denying Defendant City of Cleveland's Motion for Summary Judgment (Related Doc # <u>34</u> ) and denying Defendants' Randolph, Folmer, Kinas's Joint Motion for summary judgment (Related Doc # <u>36</u> ) A Final Pretrial Conference is set for 11/6/2017 at 11:00 AM in Chambers 17A before Judge Solomon Oliver Jr. Jury Trial is set for 12/11/2017 at 09:00 AM in Courtroom 17A before Judge Solomon Oliver Jr. A separate trial order shall issue. Signed by Judge Solomon Oliver, Jr. on 10/16/2017. (R,Sh) (Entered: 10/16/2017)
10/16/2017	<u>41</u>	Civil Trial Order The above-titled case is scheduled for trial on December 11, 2017, at 9:00 a.m. in Courtroom 17A. A final pretrial conference is scheduled on November 6, 2017, at 11:00 a.m. in Chambers 17A. Pursuant to Local Rule 16.3 (e), parties and lead counsel of record must be present and prepared with full authority to discuss all aspects of the case, including any pleadings, scheduling matters and settlement. Related document <u>40</u> . Signed by Judge Solomon Oliver, Jr. on 10/16/2017. (R,Sh) (Entered: 10/16/2017)
11/01/2017	<u>42</u>	NOTICE OF APPEAL to the Sixth Circuit Court of Appeals from the <u>40</u> Order of 10/16/17, filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Filing fee \$505 paid, receipt number 0647-8395020) (Serrat, Marisa). Modified text on 11/3/2017 (H,SP). (Entered: 11/01/2017)
11/02/2017	<u>43</u>	

		<b>Motion to sever claim against the City of Cleveland</b> filed by Plaintiff Robert Kalvitz. (Flaxman, Kenneth) (Entered: 11/02/2017)
11/06/2017	<u>44</u>	<b>Opposition with Memorandum in Support to <u>43</u> Motion to sever claim against the City of Cleveland</b> filed by City of Cleveland, Ohio. (Menzalora, William) Modified text on 11/6/2017 (M, S). (Entered: 11/06/2017)
11/06/2017	<u>45</u>	<b>Motion with Memorandum in Support for Order Certifying Interlocutory Appeal Under 28 U.S.C. 1292(b)</b> filed by Defendant City of Cleveland, Ohio. (Menzalora, William) Modified text on 11/6/2017 (M, S). (Entered: 11/06/2017)
11/06/2017	<u>46</u>	<b>Minute Order of Final Pretrial Conference.</b> The court held a final pretrial conference with counsel for the parties in the within case on November 6, 2017, at 11:00 a.m. At that conference, the court denied Plaintiffs Motion to Sever the Claim against the City of Cleveland (ECF No. 43). The court determined that it would try the case as one, instead of taking a piecemeal approach. The case is hereby stayed. Judge Solomon Oliver, Jr. on 11/6/2017. Time: 50 minutes(R, Sh) (Entered: 11/06/2017)
11/13/2017		Acknowledgment from the USCA for Sixth Circuit of receipt of <u>42</u> Notice of Appeal (USCA# 17-4174). Date filed in USCA 11/8/17. (H,SP) (Entered: 11/13/2017)
<del>11/27/2017</del>	<del><u>47</u></del>	<del><b>Response to <u>45</u> Motion for Order Certifying Interlocutory Appeal Under 28 U.S.C. 1292(b)</b> filed by Robert Kalvitz. (Flaxman, Kenneth) (Entered: 11/27/2017)</del>
12/01/2017	<u>48</u>	<b>Reply in support of <u>45</u> Motion for Order Certifying Interlocutory Appeal Under 28 U.S.C. 1292(b)</b> filed by City of Cleveland, Ohio. (Menzalora, William) (Entered: 12/01/2017)
03/16/2018	<u>49</u>	Defendant City of Cleveland's Notice of Supplemental Authority in Support of Motion to Certify Interlocutory Appeal filed by City of Cleveland, Ohio. (Attachments: # <u>1</u> Exhibit Sixth Circuit - Order - Denying Motion to Dismiss (3-12-18), # <u>2</u> Exhibit Sixth Circuit - stay - further merit briefing (3-15-18)) Related document(s) <u>48</u> , <u>45</u> .(Menzalora, William) (Entered: 03/16/2018)
03/19/2018	<u>50</u>	Response to Defendants Notice of Supplemental Authority in Support of Motion to Certify Interlocutory Appeal filed by Robert Kalvitz. Related document(s) <u>49</u> .(Flaxman, Joel) (Entered: 03/19/2018)
05/23/2018	<u>51</u>	<b>Motion to Advance for Ruling Defendant Cleveland's Motion to Certify Interlocutory Appeal</b> filed by Plaintiff Robert Kalvitz. Related document(s) <u>45</u> . (Attachments: # <u>1</u> Exhibit 1 - Court of Appeals Letter)(Flaxman, Joel) (Entered: 05/23/2018)
05/25/2018	<u>52</u>	<b>Order denying Defendant City of Cleveland's Motion to Certify Interlocutory Appeal (Related Doc # <u>45</u> )</b> for the reasons stated. Signed by Judge Solomon Oliver, Jr. on 5/25/2018.(R,Sh) (Entered: 05/25/2018)
03/15/2019	<u>54</u>	True copy of mandate from the USCA for the Sixth Circuit: Affirming the District Court's decision re <u>42</u> Notice of Appeal (USCA# 17-4174). Date issued as mandate 3/15/19, Costs: None (H,SP) (Entered: 03/15/2019)



04/11/2019	<u>55</u>	<b>Civil Trial Order.</b> Jury Trial is set for 7/15/2019 at 09:00 AM in Courtroom 17A before Judge Solomon Oliver Jr. Final Pretrial Conference is set for 6/17/2019 at 10:30 AM in Chambers 17A before Judge Solomon Oliver Jr. Pursuant to Local Rule 16.3(e), parties and lead counsel of record must be present and prepared with full authority to discuss all aspects of the case, including any pleadings, scheduling matters and settlement. Signed by Judge Solomon Oliver, Jr. on 4/11/2019. (R,Sh) (Entered: 04/11/2019)
06/17/2019	<u>56</u>	Attorney Appearance by Stephen W. Funk filed by on behalf of City of Cleveland, Ohio. (Funk, Stephen) (Entered: 06/17/2019)
06/19/2019	<u>57</u>	<b>Final Pretrial Conference Order.</b> Counsel for the parties indicated at the conference that they were prepared to proceed to trial. They were unable to reach as settlement in the case. They also indicated that trial is estimated to last four or five days. Counsel for Defendants stated that they had not received Plaintiffs' updated medical records. The parties agreed that counsel for Plaintiff will furnish Defendants with all available updated medical records on or before June 21, 2019. Trial shall commence on July 15, 2019, at 9:00 a.m. Parties shall refer to the court's Civil Trial Order (ECF No. 55) for trial-related deadlines. Signed by Judge Solomon Oliver, Jr. on 6/18/2019. (R,Sh) (Entered: 06/19/2019)
06/21/2019	<u>58</u>	<del>Witness List &amp; Exhibit List</del> filed by City of Cleveland, Ohio. Related document (s) <u>55</u> . (Menzalora, William) (Entered: 06/21/2019)
06/28/2019	<u>59</u>	Attorney Appearance by Henry J. Hilow filed by on behalf of Jeffrey J. Follmer. (Hilow, Henry) (Entered: 06/28/2019)
07/01/2019	<u>60</u>	Joint Motion to bifurcate <i>Punitive Damages</i> filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) (Entered: 07/01/2019)
07/01/2019	<u>61</u>	Joint Motion in limine : Medical Testimony filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) (Entered: 07/01/2019)
07/01/2019	<u>62</u>	Joint Motion in limine : Personnel Issues and Prior Criminal Offenses filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) (Entered: 07/01/2019)
07/01/2019	<u>63</u>	Joint Motion in limine : Plaintiff's Unauthenticated and Incomplete Medical and Billing Records filed by Jeffrey J. Follmer, Steven W. Kinas, Christopher D. Randolph. (Serrat, Marisa) (Entered: 07/01/2019)
07/01/2019	<u>64</u>	Motion in limine Omnibus Motions in Limine filed by Plaintiff Robert Kalvitz. (Kovoor, Sarah) (Entered: 07/01/2019)

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IN THE EAST CLEVELAND MUNICIPAL COURT  
CRIMINAL DIVISION  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO	)	CASE NUMBER: CRB 623
	)	
	)	
Plaintiff	)	JUDGE WILLIAM DAWSON
	)	
vs.	)	
	)	
RANDOLPH DAILEY	)	<u>RESPONSE TO CITY'S OPPOSITION</u>
	)	<u>TO CITY'S OPPOSITION TO DEFENDANT'S</u>
Defendant	)	<u>MOTION TO CONTINUE</u>
	)	

Now comes the Defendant Randolph Dailey's Attorney, Henry J. Hilow, response to the City's Opposition to the to the Defendant's Motion for Continuance. The City's opposition is not based on Fact. These complaints laid dormant in the East Cleveland law department until motions were filed by the Defendant's attorneys to advance the instant case. There has never been any dilatory tactics by defense counsel.

The baseless attack on counsel's professional character is unfounded. There is no "contrived" attempts to delay the trial. It is ridiculous and unethical to accuse counsel of trying to employ "dilatory, purposeful tactics to further avoid justice". When the trial date was set on April 11, 2019 in the instant case, counsel had not been retained in the matter of Kalvitz vs. City of Cleveland, et al., OHND Case Number: 17-04174 before the Honorable Solomon Oliver in Federal Court. The Kalvitz case was filed before the instant case and Attorney Brian Moriarty was original counsel. A final pretrial conference was held on June 19, 2019. The parties were unable to reach a settlement in this case. The order stated trail shall commence on July 15, 2019 (see Exhibit 1). Counsel is the attorney for the CPPA. Brian Moriarty, who had been the attorney for the CPPA, is not their counsel and is currently Law Director in North Ridgeville. Mr. Moriarty is not representing Mr. Follmer (Exhibit 2).

It is outrageous for the public servant to accuse counsel of perpetrating a conspiracy

and fraud against the Court. The City's Prosecutor's reference that she spoke to Attorney Sarah Thomas Kovoor on July 1, 2019 who is an attorney in the Kalvitz never mentioned "Henry Hilow". Henry Hilow filed a Notice of Appearance on Friday, June 28, 2019. In fact, the Prosecutor does not reference whether she asked if Mr. Hilow had filed a Notice of Appearance. Counsel has never delayed the process in the instant case.

The City's Motion in opposition is inflammatory, baseless and most importantly without merit. For the forgoing reasons, Counsel's stands by the original motion to continue filed in the instant case. This request is made in the interest of justice.

Respectfully submitted,

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**Henry J. Hilow (0019601)**  
The Rockefeller Building, Ste. 1300  
614 West Superior Avenue  
Cleveland, Ohio 44113  
Phone: (216)344-9220  
Fax: (216)664-6999  
ATTORNEY FOR RANDOLPH DAILEY

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion to Continue was sent to Willa Hemmons, Esq., City of East Cleveland Prosecutor, by submittal to Clerk's Office, 14340 Euclid Ave., Cleveland, Ohio on this 28<sup>th</sup> day of June 2019.

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**HENRY J. HILOW (0019601)**  
**The Rockefeller Building, Ste. 1300**  
**614 West Superior Ave.**  
**Cleveland, Ohio 44113**

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**From:** Willa Hemmons <whemmons@eastcleveland.org>  
**Sent:** Friday, July 05, 2019 11:50 AM  
**To:** Henry Hilow  
**Cc:** Kevin Spellacy; Judgedawson@eccourt.com  
**Subject:** East Cleveland v Randolph Dailey Case No 15crb0063

Dear Atty. Hilow:

Please be advised that on July 3, 2019, my secretary was notified by the East Cleveland Municipal Clerk of Courts that your Motion for a Continuance of the July 15, 2019, Jury Trial in the subject case was denied.

As the Jury Trial is going forward, your clients presence at the trial is mandatory. In the event of his non-appearance, I will request a *capias* until such time as his case is resolved.

Inasmuch as you filed your Notice of Appearance on June 28, 2019, two weeks before our trial date for a case with the same trial date as the instant one, in consideration of your client, I would suggest that there are at least four other attorneys with intimate knowledge of the facts and circumstances of this case.

Sincerely,

*/s/ Willa Hemmons*

Willa Hemmons  
Law Director  
City of East Cleveland  
14340 Euclid Avenue  
East Cleveland, Ohio 44112  
(216) 681-2169 Office; (216) 681-2199 FAX  
[whemmons@eastcleveland.org](mailto:whemmons@eastcleveland.org)